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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,324	03/28/2004	George H. Gibbens III	6541-0403	2688

47360 7590 03/06/2007  
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EXAMINER
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BACHMAN, LINDSEY MICHELE

ART UNIT	PAPER NUMBER
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3734

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/06/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/812,324

Applicant(s)

GIBBENS ET AL.

Examiner

Lindsey Bachman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) 1 and 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This Office Action is in response to Applicant's amendment filed on 4 December 2006.

#### ***Claim Objections***

1. Claim 1 is objected to because of the following informalities: "arcuate" is spelled "acuate" in line 14.
2. Claim 10 is objected to because the word "in" is spelled "m" in line 1.  
Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 6 and 8 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claims 6 and 8 and 10 recite the limitation "said plurality of cavities". Since two sets of cavities are introduced in Claim 6, it is unclear which cavities Applicant is describing in the different portions of the claims.

#### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

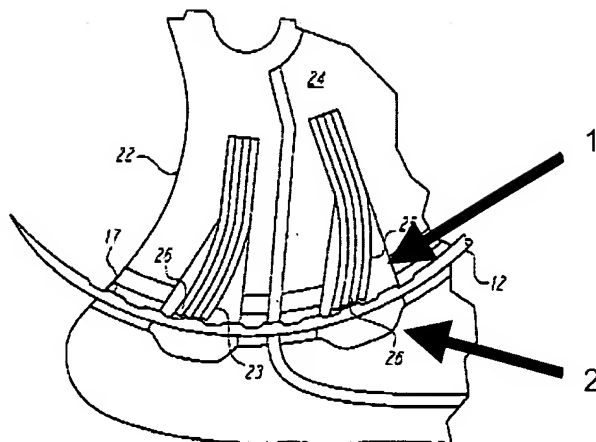
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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**7. Claim 1: Claims 1-9 are is rejected under 35 U.S.C. 102(b) as being anticipated by Taylor (US Patent 5,911,727).**

8. Claim 1: Taylor'727 discloses a suturing device that contains a curved needle (12); a first plurality of one-way engaging devices (25, 25) that selectively engage the curved needle (see Figure 7, 7a and column 3, lines 30-65); an arcuate reversing housing (16) that is concentrically positioned around the curved needle for changing the direction of the engaging device (Figures 1, 7, 7a); and an arcuate driver (24) that is concentrically positioned within the arc of the curved needle. The arcuate driver moves along a path (column 4, lines 55-57) and is adapted to pivot the plurality of engaging devices to engage the needle (column 3, lines 30-35 and column 4, ines 53-63). The arcuate driver also has a plurality of circumferentially spaced cavities (see arrow 1 in the Figure 7a below). The engaging devices are contained within the cavity (see Figure 7a). Further, Taylor'727 discloses a fixed way (22) that provides a path for the arcuate driver.



9. Claim 2: The one-way engaging devices are blades having a slot that can engage the needle (movement of flexible fingers 26 creates slots for engaging; column 3, lines 30-49).

10. Claim 3: The fixed way (22) has a second plurality of pivoting one-way engaging devices (23) that engage the curved needle. There is also a reverser (73) that changes the direction of the second plurality of one-way engaging devices (see Figure 8). 9

11. Claim 5: The arcuate reversing housing also contains a plurality of spaced cavities for the first plurality of one-way engaging devices (see arrow 2 in the figure for claim 1 rejection above).

12. Claim 4: Taylor'727 discloses a method of surgically suturing (column 1, lines 5-15) that includes providing a driver (24) having a cavity (see arrow 1 in figure for claim 1 rejection); providing a blade (25) with a slot (movement of flexible fingers 26 creates slots for engaging; column 3, lines 30-49) wherein the blade is mounted within the cavity (see Figures 7, 7a). Next, pivoting the blade within the cavity engages the interior surface of the slot and the needle (see Figure 7a). Next, the blade is driven in a first

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direction to drive the needle in the same direction (column 3, lines 16-65) out of the housing and then back into the housing (column 4, lines 53-63). Further, a suture is attached to the needle for suturing (column 3, lines 5-15).

13. Claim 6: Taylor'727 discloses a suturing device that contains a curved needle (12) and an arcuate driver (24) that is positioned within the arc of the curved needle. The arcuate driver moves along a path (column 4, lines 55-57) and has a first plurality of circumferentially spaced cavities (see arrow in the figure above for Claim 1 rejection). Further, the device contains a plurality of blades (25, 26) carried within the cavities of the driver. One end of each blade is received within the cavity (see arrow 1 in the figure for Claim 1 rejection above). There is also an arcuate reverser (16) is positioned around the curved needle. The reverser also has a second plurality of circumferentially spaced cavities and part of the blade is place within these cavities (see arrow 2 in the figure for Claim 1 rejection above).

14. Claim 7: Each blade has a slot for receiving the needle (movement of flexible fingers 26 creates slots for engaging; column 3, lines 30-49).

15. Claim 8: The first set of cavities is triangular in shape (see Figures 7, 7a).

16. Claim 9: The triangular shaped cavities narrow down to an apex and then expand to form a sub cavity that contains the base end of the blades (see Figure 7,7a).

### ***Claim Rejections - 35 USC § 103***

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

18. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

19. **Claim 10 rejected under 35 U.S.C. 103(a) as being unpatentable over**

**Taylor'727.**

20. Taylor'727 discloses all the limitations of Claim 10 except for placing a spring into the cavities. However, Taylor'727 does teach using a spring (111, Figures 11, 12) in order to bias the bearing that engages the needle. It would be obvious to use the spring in order to bias the blade instead of the tight fitting engagement because it would reduce the bending stresses on the blades caused by repeated use.

### ***Response to Arguments***

Applicant's arguments with respect to Claims 1-4 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

21. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

22. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lindsey Bachman whose telephone number is 571-272-6208. The examiner can normally be reached on Monday to Thursday 7:30 am to 5 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on 571-272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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A handwritten signature in black ink, appearing to read "M J Hayes", with a long horizontal flourish extending to the right.

MICHAEL J. HAYES  
SUPERVISORY PATENT EXAMINER